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LEE SOY

v.

HONG SEE CHING & ORS

B HIGH COURT MALAYA, KUALA LUMPUR
MOHD YAZID MUSTAFA JC
[CIVIL SUIT NO: S6-22-1076-2002]
11 DECEMBER 2009

C ***LAND LAW:*** *Title - Boundary marks - Removal of boundary stones on plaintiff's land - Plaintiff's land reduced in size and area - Whether defendants liable - Conspiracy - Whether proved - Whether there was an agreement reached between parties for payment of compensation to plaintiff*

D ***TORT:*** *Negligence - Duty of care - Subdivision and alienation of land - Surveyor wrongful removed boundary stones on plaintiff's land - Liability - Letter of indemnity, applicability of*

TORT: *Conspiracy - Conspiracy to defraud - Subdivision and alienation of land - Removal of boundary stones on plaintiff's land - Whether* E *defendants had conspired and abetted to reduce part of plaintiff's land*

On 9 October 1990, the plaintiff executed a sale and purchase agreement with one Zaharah for the undivided 1/4 share of a piece of land in Sepang, Selangor ('the land'). The plaintiff, F Zaharah and one Atan Bulat who owned another 1/4 share of the land then appointed Aicos Management Consortium Sdn Bhd ('Aicos') to do the necessary application for subdivision and alienation or change of land use, and had also authorized Aicos to appoint a licensed land surveyor to conduct survey works on the G land. The Sepang Land Office approved the subdivision and alienation of the land into three parts. Consequently, the plaintiff held the temporary document of title to the land alienated as Lot 555, Zaharah to the land alienated as Lot 554 and Atan to the land alienated as Lot 553. Zaharah later sold Lot 554 to the 2nd defendant. On 2 December 1996, the plaintiff obtained approval H from the Sepang Land Office for the change of land use from agricultural land to building land. The plaintiff later filed this action for *inter alia* declaratory reliefs against the defendants. It was not in dispute that the 1st defendant was the land surveyor who conducted the survey over the plaintiff's land for purposes of

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subdivision, that the 3rd and 4th defendants were the directors of the 2nd defendant, and that the 5th defendant was the 2nd, 3rd and 4th defendants' solicitor responsible for providing legal advice on the subdivision of Lot 555. It was the plaintiff's case that sometime in mid 2001, the defendants had conspired and abetted to reduce part of the plaintiff's land facing the main road and changing the boundaries of the plaintiff's land - with the result that the plaintiff's land area had been reduced from 40.2345 metres to 35.976 metres. The defendants argued that the plaintiff had agreed to the subdivision of Lot 555 based on the survey conducted by the 1st defendant (which showed a reduction in Lot 555 because it was agricultural land). As for the first defendant, it was contended that a letter of indemnity had been issued in his favour by the 2nd to 5th defendants, and the 1st defendant hence claimed indemnity from the said latter defendants. And lastly, the defendants said that the plaintiff knew and agreed to the reduction of Lot 555 for a compensation of RM20,000.

Held (allowing the plaintiff's claim):

(1) The plaintiff's testimony is supported with relevant documentary evidence and the testimony of the director of Aicos to establish that the plaintiff's intention in appointing Aicos was solely for arranging the application to the Land Office for subdivision and alienation of Lot 555 and the land belonging to Zaharah (Lot 554) and Atan (Lot 553). The defendants have not proven on a balance of probability through any documentary evidence that the plaintiff had the intention, knowledge or consent whether express or implied that Lot 555 was to be subdivided and alienated with a reduction in its measurement or exchanged with the 2nd defendant' rear property (Lot 554) and a payment of RM20,000 as compensation. (para 11)

(2) The application for subdivision forwarded by the 1st defendant to the Department of Survey and Mapping of Selangor was for an entirely different piece of land ie, Lot 10379 Mukim Klang. The property in question here is Lot 555 originally known as PT No. 3054 Sg Pelek, Mukim Sepang, Negeri Selangor registered to the plaintiff. Prior to subdivision and alienation of Lot 555 to the plaintiff's name, this land was part of the land alienated as H.S. (M) 703 Lot 502 Sek 1, Mukim of Sepang, Selangor Darul Ehsan to the said Zaharah. (para 13)

(3) The court is unable to reasonably conclude on a balance of probability that Lot 10379 Mukim Klang mentioned in the Department of Survey and Mapping of Selangor's letter to the 1st defendant has any nexus whatsoever to the original land known as H.S. (M) 703 Lot 502 Sek 1, Mukim of Sepang, Selangor Darul Ehsan or to the subdivided land registered to the plaintiff known as PT No. 3054 Sg Pelek, Mukim Sepang, Negeri Selangor now known as Lot 555. This, and the 1st defendant's blatant omission to conduct a search at the Sepang Land Office on the status of Lot 555 prior to applying and obtaining the subdivision plan are evidence of the 1st defendant's gross negligence and wrongful default in performing his duty as the appointed land surveyor. As it were, the 1st defendant owed a duty of care directly to the plaintiff by his appointment through Aicos. The 1st defendant is therefore liable to the plaintiff due to the abovementioned negligence which resulted in the wrongful removal of the boundary stones on the plaintiff's land, and the wrongful loss of the front portion of the plaintiff's land. Consequently, the 1st defendant has no defence in claiming indemnity from the 2nd to 5th defendants nor could the 1st defendant claim defence in acting merely on the instruction of the 2nd to the 5th defendants regardless of the 2nd defendant's letter of indemnity. (para 13)

(4) The plaintiff has no legal obligation to convey information regarding the change of land use for Lot 555 from agriculture to building to the 2nd to 5th defendants. The 2nd, 3rd and 4th defendants had the benefit of legal advice from the 5th defendant. The 5th defendant, in dispensing his legal advice to his clients, could have conducted a search at the Sepang Land Office prior to the meeting with the plaintiff in 2001. (para 15)

(5) There was a conspiracy among the defendants to reduce the plaintiff's land by the two acts in removing the boundary stones on Lot 555 and the subdivision of Lot 555 as stated in plan PA 73420. The approval of plan PA 73420 on 17 September 2001 was obtained through an application to subdivide an entirely different plot of land, *ie*, Lot 73420 in the Mukim of Klang. As for the 3rd and 4th defendants, clearly they have actively participated in orchestrating the

removal of the boundary stones on Lot 555 and the subsequent approval of plan PA 73420. *Hock Hua Bank (Sabah) Berhad v. Lam Tat Ming & Ors* (refd). (paras 16, 17, 18 & 19)

(6) Accordingly the plaintiff's claim is allowed for (i) a declaration that the survey works carried out by the 1st defendant on the plaintiff's land is wrong; (ii) a declaration that the plaintiff's land that is facing the main road is 40.2345 meters in width; (iii) a declaration that plan PA 73420 dated 17 September 2001 is to be cancelled and any document of title issued pursuant to the said plan for Lot 555 and Lot 554 is to be cancelled; (iv) general damages to be assessed and paid by the 1st to 5th defendants to the plaintiff; and (v) costs of this action to be assessed. (para 21)

Case(s) referred to:

Abdul Manaf Mohd Ghows & Ors v. Nusantara Timur Sdn Bhd [1997] 4 CLJ 437 CA ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

ATA Management Consultants Sdn Bhd v. Makmuran Sdn Bhd [2004] 3 CLJ 53 CA ***(refd)***

Hock Hua Bank (Sabah) Berhad v. Lam Tat Ming & Ors [1995] 1 LNS 80 HC ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 101, 102, 103

For the plaintiff - Chan Siew Cheong; M/s Tee & Lee
For the 1st defendant - M/s Aziyante Selva Anand & Assocs
For the 2nd, 3rd, 4th and 5th defendants - S Ravi Chandran; M/s Seah Balan Ravi & Co

Reported by Susheila Sreedharan

JUDGMENT

Mohd Yazid Mustafa JC:

[1] The plaintiff is claiming against the defendants, a declaration that the survey works done by the 1st defendant on the plaintiff's land in June or July 2001 is wrong; a declaration that the plaintiff's land PT No. 3054 Sg Pelek, Mukim Sepang, Negeri

A Selangor (now known as Lot 555 Sg Pelek, Daerah Sepang, Negeri Selangor) which is facing the main road is 40.2345 metres in width; a declaration that plan PA 73420 dated 17 September 2001 is to be cancelled and any title issued in accordance with the plan *viz* for Lot 555 Sg Pelek, Daerah Sepang, Negeri Selangor and
B Lot 554 Sg Pelek, Daerah Sepang, Negeri Selangor is to be cancelled; general damages and exemplary damages; and costs of the action.

The Re-Amended Statement of Claim and Amended Reply To The Statement Of Defence

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[2] The plaintiff is the owner of the land known as PT No. 3054 Sg Pelek, Mukim Sepang, Negeri Selangor (now known as Lot 555, Sg Pelek, Daerah Sepang, Negeri Selangor). The 1st defendant is the land surveyor who conducted the land survey over
D the plaintiff's land for purposes of subdivision at the Land Office. The 2nd defendant is the owner of the land known as PT No. 3053, Sg Pelek, Mukim Sepang, Negeri Selangor (now known as Lot 554, Sg Pelek, Daerah Sepang, Negeri Selangor). The 3rd and the 4th defendants are the directors of the 2nd defendant.
E The 5th defendant was the solicitor for the 2nd, 3rd and 4th defendants and was responsible in providing legal advice regarding the subdivision of Lot 555 (the plaintiff's land).

[3] The plaintiff is contending that sometime in June or July of 2001, the defendants had conspired and abetted to reduce part of
F the plaintiff's land facing the main road and changing the boundaries of the plaintiff's land. The 1st defendant had conducted survey works on the plaintiff's land and the 2nd defendant's land. The 1st defendant had upon the instruction of the 2nd defendant through the 3rd and 4th defendant removed the boundary stones
G on the plaintiff's land without the consent of the latter. As a result of the wrongful removal of the boundary stones on the plaintiff's land, the plaintiff's land was reduced from 40.2345 metres to 35.976 metres. The 1st defendant then had submitted to the 'Director of Survey and Mapping of the State Selangor' plan
H no. PA 73420 dated 17 September 2001 (the said plan) misdirecting the true facts regarding the survey conducted by the 1st defendant. On 4 December 2001, the said director had approved the said plan based on the 1st defendant's misdirection of facts. The plaintiff is contending that he had never agreed to

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the appointment of the 1st defendant for the survey works conducted for the subdivision of his land (lot 555). At all material times, the plaintiff has obtained the approval of the Land Office of Tanah Sepang, Semenyih for the change in land usage from agricultural land to building land on 2 December 1996.

The 1st defendant's Amended Statement of Defence

[4] The 1st defendant is contending that it was appointed by Messrs. Aicos Management Consortium Sdn Bhd (Aicos) and was acting on the authorized instruction of the plaintiff and the defendants to conduct the survey works on the plaintiff's land (Lot 555) and the adjoining lands on Lots 553 and 554. The 1st defendant is denying any liability based on the reason that he was acting upon the instruction of Aicos and with the knowledge of the plaintiff. The 1st defendant is contending that the said plan showed a reduction in the plaintiff's land (Lot 555) because it was agricultural land. The 1st defendant is contending an agreement was reached between the plaintiff and the 2nd to the 5th defendants that the land area of Lot 554 would be reduced and divided to Lot 553 and the plaintiff's land (Lot 555) in order for the plaintiff's land to be 1 acre in measurement and therefore comply with the National Land Code requirement for agricultural land. The 1st defendant is contending that a letter of indemnity was issued by the 2nd to the 5th defendant as owner of Lot 554. All these were done prior to the director's approval of the said plan. Alternatively, the 1st defendant is claiming an indemnity from the 2nd to the 5th defendants for the negligence of their part in misinforming the 1st defendant regarding the plaintiff's consent to subdivide the plaintiff's land; that the plaintiff knew and agreed for the reduction on the front portion of the plaintiff's land; that the plaintiff had agreed to receive additional land from the 2nd defendant's land and compensation of RM20,000 for the reduction in the plaintiff's land; that the plaintiff agreed to the appointment of the 1st defendant; and providing the 1st defendant the letter of indemnity dated 13 September 2001.

The Second To The Fifth Defendants' Statement Of Defence

[5] The contention is that the subdivision of the plaintiff's land (Lot 555) had a reduction in measurement to facilitate a set back of 20 feet for a drain by the relevant authority. The title issued to the plaintiff was a temporary title to be finalized by the

relevant authority. The 2nd defendant had purchased Lot 554 adjoining to the plaintiff's land (Lot 555) for development purposes and had applied for subdivision. The measurement of the plaintiff's land (Lot 555) was at all material times one acre. As a result of the alienation and setback, the plaintiff's land (Lot 555) would be reduced to less than one acre which is in contravention of the National Land Code. The solution was that the plaintiff was given the rear portion of the 2nd defendant's land in order for the measurement of the plaintiff's land (Lot 555) to be one acre. The 2nd defendant had also agreed to pay to the plaintiff RM20,000 as compensation for removal of the plaintiff's fence and workshop built on the front portion of the plaintiff's land (Lot 555). The 2nd defendant is contending that the subdivision of the plaintiff's land (Lot 555) that included the reduction of the measurement was done with the express and or implied consent, approval and/or knowledge of the plaintiff. The 2nd defendant is contending that it has subdivided its land and sold the subdivided lots with individual titles to purchasers. As such, the 2nd defendant is unable to surrender the land measuring 4.2585 metres that was originally part of the plaintiff's land (Lot 555).

Findings of this Court

[6] On 9 October 1990, the plaintiff had executed a sale and purchase agreement with one Zaharah binti Janis for the sale and purchase of the undivided 1/4 share of the land held under H.S. (M) 703 Lot 502 Sek 1, Mukim of Sepang, Selangor Darul Ehsan (the land) for the purchase price of RM50,000. The plaintiff and the said Zaharah had agreed that both parties would undertake the necessary action in applying for subdivision of the land once the transfer of the property was completed. Once the subdivision of the land was completed, both parties agreed that the plaintiff is entitled to the portion of the land next to the main road of Sungai Pelek Town. The said Zaharah had affirmed a statutory declaration dated 15 August 2001 stating that the land which she had sold to the plaintiff is known as H.S. (M) 2628 No. PT 3054 Mukim Sepang, Selangor with a measurement of 132 feet in width which is the portion of land facing the main road of Sungai Pelek Town and 330 feet in length as identified in the temporary document of title.

[7] The plaintiff, the said Zaharah and one Atan bin Bulat who owns another 1/4 share of the land (PT No. 3052) then appointed Aicos *via* letter dated 17 July 1991 to conduct the necessary application for subdivision and alienation of Lot 501 of Mukim Sepang or change of land use and had also authorized Aicos to appoint a licensed land surveyor to conduct survey works on the land.

[8] On 1 April 1993, the plaintiff, the said Zaharah and the said Atan had applied for subdivision of the land, whereby the plaintiff would be registered as the owner of 1/4 share, the said Zaharah as owner of 2/4 share and the said Atan as owner of 1/4 share in the land (See p. 37-38 of the Agreed Bundle of Documents). On 29 September 1993, the said Zaharah had obtained the approval from the Sepang Land Office regarding of the subdivision and alienation of the land into three parts. The plaintiff, the said Zaharah and the said Atan had then obtained temporary documents of title to their respective share in the land whereby the plaintiff held the temporary document of title to the land alienated as H.S (M) 2628 PT No. 3054 (now the Lot 555), the said Zaharah held the temporary title to the land alienated as H.S (M) 2627 PT No. 3053 (now the Lot 554) and the said Atan held the temporary title to the land alienated as H.S (M) 2626 PT No. 3052 (now the Lot 553). The said Zaharah had then sold her land to the 2nd defendant which charged H.S. (M) 2627 PT No. 3053 (now the Lot 554) to DCB Bank.

[9] On 2 December 1996, the plaintiff had obtained the approval from the Sepang Land Office for the change of land use from agricultural land to building land (See p. 45 of the agreed bundle of documents) wherein the condition for the land use was stated for building of shophouses. On 21 September 1998, the Department of Survey and Mapping of Selangor wrote to the 1st defendant stating that the 1st defendant's application for subdivision would have to be re-applied because the measurement for 'Lot 10379 Mukim Klang' was not in accordance with the State Authority's approved subdivision measurement. (See p. 48 of the agreed bundle of documents).

[10] On 16 April 1999, the Jabatan Pengairan dan Saliran Daerah Sepang had written to the Sepang Land Office stating the approval for the plaintiff's application for subdivision of the building land

for the land known as H.S (M) 2628 PT 3054, Mukim and District of Sepang subject to the fulfilment of certain conditions regarding sewerage and drainage.

[11] In my judgment, I find that the plaintiff's testimony is supported with the relevant documentary evidence *viz* the letter of appointment dated 17 July 1991 (Page 28 of the Agreed Bundle of Documents) and the testimony of Lim Siang Kim (the defendants' witness) who is the director of Aicos to establish that the plaintiff's intention in appointing Aicos was solely for arranging the application to the land office for subdivision and alienation of the plaintiff's land (Lot 555) and the land belonging to the said Zaharah (Lot 554) and the said Atan (Lot 553). Although the letter of appointment also authorizes Aicos to appoint a land surveyor for the purposes of survey works for submission of the application for subdivision and alienation to the land office, I find that the defendants have not proven on a balance of probability through any documentary evidence that the plaintiff had the intention, knowledge or consent whether express or implied that Lot 555 was to be subdivided and alienated with a reduction in its measurement or exchanged with the 2nd defendant's rear property (Lot 554) and a payment of RM20,000 as compensation. The plaintiff has testified succinctly that he had never agreed to any arrangement regarding the exchange of the front portion of Lot 555 with the rear portion of the 2nd defendant's land (Lot 554) and the RM20,000 compensation. In fact, the plaintiff had through his solicitors returned the 2nd defendant's cheque amounting to RM20,000 stating the plaintiff's disagreement in receiving the alleged compensation payment *via* letter dated 16 September 2002 (p. 90 of the agreed bundle of documents).

[12] The plaintiff had on his own initiative applied and obtained the Sepang Land Office's approval for change of land use from agriculture to building on 2 December 1996 (p. 45 of the agreed bundle of documents). The Jabatan Pengairan dan Saliran Sepang has provided for their approval and consent regarding the change of land use to building for Lot 555 *via* the former's letter to the Sepang Land Office dated 16 April 1999 (pp. 49 - 54 of the agreed bundle of documents). This change of land use would have clearly been stated on the registered document of title at the Sepang Land Office. Any person carrying out a search from 1996 until 2001 as to the status of Lot 555 would have easily obtained

this information. As such, I find the testimony of the 1st defendant as incredible that as a professional land surveyor, he was unable to obtain the information regarding the change of land use to building land for Lot 555 by conducting a search at the Sepang Land Office. I find that the 1st defendant's testimony in placing the blame upon the plaintiff in contending the latter's neglect and failure to inform any of the defendants regarding the change of land usage as ridiculous and unreasonable. The 1st defendant is a professional land surveyor with the requisite experience as a land surveyor since 1986 that was appointed by Aicos to conduct survey works for the purpose of applying for subdivision and alienation of *inter alia* Lot 555, the plaintiff's land. The logical and professional step for the 1st defendant was to conduct a prior search at the Sepang Land Office to determine the status of Lot 555 whether there were any encumbrances attached to the land or change as to land use.

[13] I also find that the application for subdivision forwarded by the 1st defendant to the Department of Survey and Mapping of the Selangor was regarding an entirely different piece of land. If one were to scrutinize the letter from the Department of Survey and Mapping of Selangor to the 1st defendant dated 21 September 1998 (p. 48 of the Agreed Bundle of Documents), one would observe that the subject matter concerned the subdivision and alienation of Lot 10379 Mukim Klang. I find that the property in question in the present suit is Lot 555, that was originally known as PT No. 3054 Sg Pelek, Mukim Sepang, Negeri Selangor which is registered to the plaintiff. Prior to the subdivision and alienation of Lot 555 to the plaintiff's name (See the temporary document of title at pp. 14 - 16 of the agreed bundle of documents), the land in question was part of the land alienated as H.S. (M) 703 Lot 502 Sek 1, Mukim of Sepang, Selangor Darul Ehsan to the said Zaharah. I have studied and addressed my mind to the various document of titles evidencing H.S. (M) 703 Lot 502 Sek 1, Mukim of Sepang, Selangor Darul Ehsan and PT No. 3054 Sg Pelek, Mukim Sepang, Negeri Selangor that is now known as Lot 555 which is the plaintiff's land. I am unable to reasonably conclude on a balance of probability that the land mentioned in the letter from the Department of Survey and Mapping of Selangor to the 1st defendant dated 21 September 1998 regarding Lot 10379 Mukim Klang has any nexus whatsoever to the original land known as H.S. (M) 703 Lot 502

Sek 1, Mukim of Sepang, Selangor Darul Ehsan or to the subdivided land registered to the plaintiff known as PT No. 3054 Sg Pelek, Mukim Sepang, Negeri Selangor that is now known as Lot 555. The plaintiff's land (Lot 555) was and still is within the Mukim and District of Sepang, not Klang. These facts and the 1st defendant's blatant omission to conduct a search at the Sepang Land Office regarding the status of Lot 555 (change of land use to building from agriculture) prior to applying and obtaining of the subdivision plan PA 73420 on 17 September 2001, are evidence of the 1st defendant's gross negligence and wrongful default in performing his duty as the appointed land surveyor. The 1st defendant owes a duty of care directly to the plaintiff by the former's appointment through Aicos, the plaintiff's authorized agent for the subdivision and alienation works. The 1st defendant is liable to the plaintiff due to the abovementioned negligence which resulted in the wrongful removal of the boundary stones on the plaintiff's land ie, the wrongful loss of the front portion of the plaintiff's land. The 1st defendant therefore has no defence in claiming indemnity from the 2nd to the 5th defendants nor could the 1st defendant claim defence in acting merely on the instruction of the 2nd to the 5th defendants regardless of the 2nd defendant's letter of indemnity dated 13 September 2001 (p. 29 of the agreed bundle of documents).

[14] Sometime in 2001, the plaintiff was approached by the 3rd and 4th defendants in their capacity as the directors of the 2nd defendant and their solicitor, the 5th defendant. During the said meeting, the director of Aicos, Lim Siang Kim was also present. The subject of discussion centered on the subdivision of the plaintiff's land (Lot 555) and the 2nd defendant's land (Lot 554). The said Lim Siang Kim, the 3rd, 4th and 5th defendants have unanimously testified and attempted to persuade this court that the plaintiff had agreed for the exchange of the front portion of Lot 555 with the rear portion of Lot 554 and a compensation of RM20,000. The reason for this alleged agreement was that the subdivision of Lot 555 could not be completed unless the measurement of Lot 555 was less than 1 acre. Lot 555 had a reduction in land measurement of less than 1 acre to facilitate a set back for drainage and access road. The exchange of the front portion of Lot 555 with that of the rear portion of Lot 554 was to increase the measurement of Lot 555 to 1 acre to facilitate the subdivision application submitted to the Department of Survey and Mapping of Selangor.

[15] I find that the 3rd and 4th defendants as the directors of the 2nd defendant were in actual fact the minds behind the 2nd defendant. The 3rd and 4th defendants had met up with the plaintiff in 2001 regarding the alleged agreement arrived at, that culminated in the approval of plan PA 73420 on 17 September 2001. The 3rd and 4th defendants had testified that they had received prior legal advice from the 5th defendant before approaching the plaintiff in 2001 regarding the plan to exchange the front portion of the Lot 555 with the rear portion of Lot 554. This evidence is also confirmed by the testimony of the 5th defendant. I find that the 2nd to the 5th defendants were therefore in a stronger bargaining position compared to the plaintiff in 2001. It is also pertinent to note that the defendants had called Lim Siang Kim, the director of Aicos to testify that the plaintiff had never informed them regarding the change of land use for Lot 555 from agriculture to building. As I have enumerated in the above passage, the 2nd, 3rd and 4th defendants could have obtained this pertinent information by conducting a search at the Sepang Land Office to determine the then current status of Lot 555. The plaintiff has no legal obligation to convey this information to the 2nd until the 5th defendants. The 2nd, 3rd and 4th defendants had the opportunity of legal advice from the 5th defendant. The 5th defendant, in dispensing with his legal advice to his clients, could have conducted a search at the Sepang Land Office prior to the meeting with the plaintiff in 2001. The same could be said for Lim Siang Kim, who as the director of Aicos owes a professional duty of care to the plaintiff. I find that whatever transpired in 2001 between the plaintiff, Lim Siang Kim and the 3rd to the 5th defendants centered on the misinformation that Lot 555 was still alienated as agriculture land when its land use had been changed to building land since 1996. It is pertinent to reiterate that the 1st defendant's application for subdivision to the Department of Survey and Mapping of Selangor was not regarding Lot 555 but an unknown property known as Lot 10379 in the Mukim of Klang. It is based on all these misdirection of facts regarding Lot 555 that the defendants are attempting to prove that the plaintiff had agreed to the subsequent subdivision of Lot 555 as evidenced in plan PA 73420 on 17 September 2001. I am unable to agree with the testimony and submission of the defendants. The alleged agreement in 2001 remains a mere allegation of the defendants. The documentary evidence submitted

by both parties tilt the balance in favour of this court to believe the testimony of the plaintiff that he had never consented to a reduction in the measurement of Lot 555; the removal of the boundary stones on Lot 555; the exchange of the front portion of Lot 555 with the rear portion of Lot 554; and the RM20,000 compensation that was duly returned to the 2nd defendant in 2002.

[16] In assessing the above facts, I have come to the conclusion that there was a conspiracy among the defendants to reduce the plaintiff's land by the act of removing the plaintiff's boundary stones and the plan PA 73420, dated 17 September 2001. In *Hock Hua Bank (Sabah) Berhad v. Lam Tat Ming & 8 Ors* [1995] 1 LNS 80 His Lordship Ian Chin J (as he then was) held that:

> Halsbury's Laws, 4th Edition Vol 45 para 1527 states that the essential ingredients of conspiracy are (1) an agreement between two or more persons, (2) an agreement for the purpose of injuring the plaintiff, and (3) that acts done in execution of that agreement resulted in damage to the plaintiff. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose though it is not necessary that each conspirator should have been in communication with each other.

[17] I accept that the standard of proof for claims based on conspiracy to defraud, is beyond reasonable doubt (*Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639). I am still maintaining the finding of a conspiracy between the defendants to reduce the measurement of the Lot 555 based on the facts to which I have repeatedly highlighted in this judgment, *viz* the two acts in removing the boundary stones on Lot 555 and the subdivision of Lot 555 as stated in plan PA 73420 on 17 September 2001 and that the approval of plan PA 73420 on 17 September 2001 was obtained based on an application to subdivide an entirely different plot of land ie, Lot 73420 in the Mukim of Klang.

[18] The 3rd defendant had testified that Lot 554 has been subdivided and developed whereby individual titles have been sold to purchasers. This fact, as testified by the 3rd defendant, renders the plaintiff's claim impossible due to third party interests over the land. This court finds that this testimony is unsupported by any

sale and purchase agreements to substantiate the 3rd defendant's testimony. Put simply, there is no proof that Lot 554 has been developed with houses and shop houses built upon it, that has been sold to individual purchasers. The burden of proving the contention that Lot 554 has been subdivided, developed and sold to individual purchasers rests upon the 2nd, 3rd and 4th defendants (See s. 101, 102 and 103 of the Evidence Act).

[19] It is trite law that the directors of a company or corporation have the protection of the law under the principle of separate legal personality of the said corporation (*Abdul Manaf Mohd Ghows & Ors v. Nusantara Timur Sdn Bhd* [1997] 4 CLJ 437; *ATA Management Consultants Sdn Bhd v. Makmuran Sdn Bhd* [2004] 3 CLJ 53). However, in consideration of the particular facts in this present suit, I find that the 3rd and 4th defendants could not avail of the protection of this legal doctrine. The 3rd and 4th defendants have actively participated in orchestrating the removal of the boundary stones on Lot 555 and the subsequent approval of plan PA 73420 dated 17 September 2001.

[20] Before ending, there is a minor point raised by the plaintiff regarding the emotional suffering that he supposedly sustained as a result of the defendants' act in reducing the former's land. The plaintiff has not brought any medical report to substantiate his testimony on this point. Therefore, I am minded to find that the plaintiff has not suffered any emotional distress whatsoever.

[21] Based on the above reasons, I am allowing the plaintiff's claim for the following:

1. A declaration that the survey works carried out by the 1st defendant on the plaintiff's land in June/July 2001 is wrong;

2. A declaration that the plaintiff's land PT No. 3054 Sg. Pelek, Mukin Sepang, Negeri Selangor (now known as Lot 555 Sg Pelek., Daerah Sepang, Negeri Selangor (that is facing the main road is 40.2345 meters in width);

3. A declaration that plan PA 73420 dated 17 September 2001 is to be cancelled and any document of title issued pursuant to the said plan for Lot 555 and Lot 554 both of Sg Pelek, Daerah Sepang, Negeri Selangor is to be cancelled;

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4. General damages to be assessed and paid by the 1st to the 5th defendants to the plaintiff; and

5. Costs of this action to be assessed.

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